CASE NO. 88-389

Supreme Court, U.S.
FILED
DEC 1 1988
JOSEPH F. SPANIOL, JR.
CLERK

In The Supreme Court of the United States

OCTOBER TERM, 1988

PUBLIC EMPLOYEES RETIREMENT SYSTEM OF OHIO,
Appellant,

v.

JUNE M. BETTS,
Appellee.

ON APPEAL FROM
THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

JOINT APPENDIX

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Jurisdictional Statement Docketed August 31, 1988
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* All materials included herein have been reproduced verbatim, including any typographical errors.

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Text of Statutes Involved

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1. 29 C.F.R. 860.120(a)(1) A-40
2. 29 C.F.R. 860.120(f)(1)(iii) A-40

RELEVANT DOCKET ENTRIES

1. Complaint, filed June 14, 1985 (omitted from Joint Appendix).
2. Answer of Defendant Public Employees Retirement System of Ohio, filed July 8, 1985 (omitted from Joint Appendix).
3. Plaintiff's Motion for Summary Judgment, filed September 13, 1986 (omitted from Joint Appendix).
4. First Amended Complaint, filed October 9, 1985 (JA-1).
5. Answer to First Amended Complaint of defendant Public Employees Retirement System of Ohio, filed October 22, 1985 (JA-6).
6. Cross-Motion for Summary Judgment of defendant Public Employees Retirement System of Ohio, filed December 26, 1988 (omitted from Joint Appendix).
7. Stipulations for Summary Judgment, filed January 8, 1986 (omitted from Joint Appendix).
8. Opinion and Order of District Court granting plaintiff's motion for summary judgment and declaratory judgment and denying defendants' cross-motions for summary judgment, entered March 27, 1986 (A.-20).
9. Order of District Court directing defendant Public Employees Retirement System of Ohio to process plaintiff's application for disability retirement benefits, entered June 17, 1986 (JA-11).

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

JUNE M. BETTS	:	CIVIL ACTION NO. C-1-85-1108
Plaintiff	:	(Spiegel, J.)
vs.	:	
HAMILTON COUNTY BOARD OF MENTAL RETARDATION & DEVELOPMENTAL DISABILITIES	:	**FIRST AMENDED COMPLAINT**
and	:	
OHIO PUBLIC EMPLOYEES RETIREMENT SYSTEM BOARD	:	
Defendants	:	**JURY DEMAND**

I. PRELIMINARY STATEMENT

1. This is an age discrimination in employment action alleging denial of disability retirement benefits because of age. This is also a civil rights action for the violation of the constitutional rights of plaintiff. Plaintiff seeks redress pursuant to 42 U.S.C. §1983 and the Fourteenth Amendment to the United States Constitution. Plaintiff seeks injunctive relief, declaratory judgment, back wages or lost benefits, liquidated damages, and attorney fees from defendants under the Age Discrimination in Employment Act (ADEA). Plaintiff also seeks injunctive relief, declaratory judgment, lost benefits, compensatory damages and attorney fees under §1983.

II. JURISDICTION

2. Jurisdiction over the ADEA claim is conferred on this

Court by 29 U.S.C. § 626. Jurisdiction over the § 1983 claim is conferred on this Court by 28 U.S.C. §1343(3) and (4). Jurisdiction for declaratory judgment is conferred on this court by 28 U.S.C. §§2201 and 2202.

3. Plaintiff timely filed charges with the Equal Employment Opportunity Commission (EEOC) on June 14, 1986. (Attachment 1) alleging that she had been the victim of age discrimination.

4. On June 17, 1985 the EEOC referred plaintiff's charge to the Ohio Civil Rights Commission in order to meet the referral requirements of §14(b) of the ADEA. (Attachment #2)

III. PARTIES

5. Plaintiff is 61-years-of-age and is an employee of the defendant Hamilton County Board of Mental Retardation & Developmental Disabilities and is a member of the Ohio Public Employees Retirement System.

6. Defendant Hamilton County Board of Mental Retardation and Developmental Disabilities (hereinafter the "Board") is an "employer" as defined in 29 U.S.C. §630(b).

7. Defendant Public Employees Retirement System Board (hereinafter "PERS Board") is an agency or instrumentality of the State of Ohio and is vested with the general administration and management of the Public Employees Retirement System (hereinafter "PERS"). PERS is an "employer" as defined in 29 U.S.C. §630(b).

IV. STATEMENT OF FACTS

8. Plaintiff has been an employee of the Hamilton County Board of Mental Retardation for at least six years.

9. On June 7, 1985 plaintiff was advised by her supervisor that she should apply for voluntary retirement or he would begin proceedings for involuntary retirement. He advised her that she was not eligible for disability retirement because

she was 61 years old. On July 29, 1985 PERS refused to accept or process plaintiff's application for disability retirement because plaintiff is over 60 years old.

10. Ohio Revised Code 145.35 provides that only members of PERS who have not attained the age of sixty may apply for disability retirement.

11. Plaintiff's retirement benefits under regular PERS retirement would be approximately $139.14 per month which would be approximately 11.8% of her final average salary. If plaintiff were permitted PERS disability retirement she would be entitled to no less than 30% of her final average salary.

12. Under PERS disability retirement plaintiff could return to her previous position and salary within five years if she again became able to resume work. Plaintiff does not have this right under voluntary PERS retirement.

13. Defendants' denial of plaintiffs request for disability retirement was willful, wanton, malicious and/or reckless or careless disregard or indifference to plaintiff's right not to be discriminated against because of her age.

IV. FIRST CAUSE OF ACTION (ADEA)

14. Defendants' actions violated the ADEA, 29 U.S.C. §621 *et seq.*

V. SECOND CAUSE OF ACTION (§1983)

15. Defendant's actions violated 42 U.S.C. § 1983.

RELIEF PRAYED

WHEREFORE, plaintiff prays the Court:

A. Grant equitable relief including an order requiring defendants to place plaintiff disability retirement.

B. Order defendants to pay plaintiff for lost benefits.

C. Order the defendants to pay plaintiff liquidated damages for its willful acts;

D. Award plaintiff costs incurred in the prosecution of this action and reasonable attorney's fees;

E. Award plaintiff compensatory damages;

F. Award such other appropriate relief as the Court may deem just and proper;

G. Grant plaintiff declaratory judgment that O.R.C. Chapter 145 discriminates against disabled members on the basis of age in violation of A.D.E.A. and §1983.

Robert F. Laufman
Trial Attorney for Plaintiff
1409 Enquirer Building
617 Vine Street
Cincinnati, Ohio 45202
(513) 621-9100

JURY DEMAND

Plaintiff demands trial by jury on all issues triable by jury.

_____

Robert F. Laufman

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing document was mailed to defendant PERS' trial attorney, Jeffrey J. Jurca, Assistant Attorney General, Chief Counsel's Staff, 30 E. Broad St., 16th Floor, Columbus, Ohio 43215 and to defendant Hamilton County Board of Mental Retardation and Developmental Disabilities' trial attorney, Thomas E. Deye, Assistant Prosecuting Attorney of Hamilton County, Ohio 420 Hamilton County Courthouse, Cincinnati, Ohio 45202 this ____ day of _____, 1985.

_____

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

JUNE M. BETTS,	:	
Plaintiff,	:	
v.	:	CASE NO. C-1-85-1108
HAMILTON COUNTY BOARD OF MENTAL RETARDATION & DEVELOPMENTAL DISABILITIES, et al.,	:	JUDGE SPIEGEL
Defendants.	:	

ANSWER OF DEFENDANT OHIO PUBLIC EMPLOYEES RETIREMENT SYSTEM BOARD TO PLAINTIFF'S FIRST AMENDED COMPLAINT

Now comes the Ohio Public Employees Retirement System Board ("PERS"), a Defendant herein, and for its answer to Plaintiff's First Amended Complaint states and avers as follows:

FIRST DEFENSE

1. Regarding paragraph 1 of the Amended Complaint, Defendant PERS admits that Plaintiff contends that this is an age discrimination in employment action alleging denial of disability retirement benefits because of age, and that she claims that her constitutional rights have been violated; that Plaintiff seeks redress under 42 U.S.C. §1983 and the Fourteenth Amendment; and that Plaintiff seeks the relief set forth in paragraph 1. Defendant PERS denies that Plaintiff is entitled to such relief, and denies the remainder of paragraph 1.

2. Regarding paragraph 2 of the Amended Complaint, Defendant PERS admits that Plaintiff is attempting to invoke the jurisdiction of this Court as set forth in said paragraph. Defendant PERS denies the remainder of paragraph 2 of the Amended Complaint.

3. Defendant PERS admits that Plaintiff filed charges with the Equal Employment Opportunity Commission (EEOC) on or about June 14, 1985, and denies the remainder of paragraph 3 of the Amended Complaint.

4. Defendant PERS admits that on June 17, 1985, the EEOC referred Plaintiff's charge to the Ohio Civil Rights Commission, and denies the remainder of paragraph 4 of the Amended Complaint.

5. Defendant PERS admits paragraphs 5 and 6 of the Amended Complaint.

6. Defendant PERS admits that it is vested with the general administration and management of the Public Employees Retirement System, and denies the remainder of paragraph 7 of the Amended Complaint.

7. Defendant PERS admits paragraphs 8, 10, and 11 of the Amended Complaint.

8. Defendant PERS is without knowledge or information sufficient to form a belief as to the truth or falsity of the first two (2) sentences of paragraph 9. Regarding the third sentence of paragraph 9, Defendant PERS states that it denied Plaintiff's application for disability retirement in accordance with the provisions of R.C. 145.35. The remainder of paragraph 9 is denied.

9. Defendant PERS denies the first sentence of paragraph 12 of the Amended Complaint, and admits the second sentence of paragraph 12.

10. Defendant PERS denies paragraphs 13, 14, and 15 of the Amended Complaint.

11. Defendant PERS denies each and every other allegation of the Amended Complaint not hereinbefore expressly admitted.

SECOND DEFENSE

12. The Complaint fails to state a claim upon which relief can be granted.

THIRD DEFENSE

13. This Court lacks subject-matter jurisdiction.

FOURTH DEFENSE

14. Plaintiff's claims are barred by the Eleventh Amendment.

FIFTH DEFENSE

15. Plaintiff has failed to exhaust state remedies in accordance with 29 U.S.C. §633(b).

WHEREFORE, having fully answered, Defendant Ohio Public Employees Retirement System Board requests that this Court dismiss the Amended Complaint, and grant it such other relief as is just and equitable under the circumstances.

Respectfully submitted,

ANTHONY J. CELEBREZZE, JR.
Attorney General

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing Answer was placed in the regular U.S. Mail, postage prepaid on this _____ day of October, 1985 addressed to Robert F. Laufman, 1409 Enquirer Bldg., 617 Vine St., Cincinnati, Ohio 45202; and Thomas E. Deye, Assistant Prosecuting Attorney, 420 Hamilton County Courthouse, Cincinnati, Ohio 45202.

JEFFREY J. JURCA
Assistant Attorney General

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

JUNE M. BETTS,	:	
Plaintiff,	:	
v.	:	CIVIL ACTION NO. C-1-85-1108
HAMILTON COUNTY BOARD OF MENTAL RETARDATION & DEVELOPMENTAL DISABILITIES	:	JUDGE SPIEGEL
and	:	**ORDER**
OHIO PUBLIC EMPLOYEES RETIREMENT SYSTEM BOARD,	:	
Defendants.	:	

WHEREAS plaintiff filed this action alleging that defendants have violated the Age Discrimination in Employment Act (ADEA), 29 U.S.C. 621 *et seq.*;

WHEREAS this matter came to be heard upon plaintiff's motion for summary judgment and defendants' cross-motions for summary judgment;

WHEREAS for the reasons stated in this Court's Opinion dated March 27, 1986, the Court determined that the disability retirement plan of the Public Employees Retirement System of Ohio is not a "bona fide employee benefit plan" protected by 29 U.S.C. §623(f)(2); and further, that plaintiff was confronted with constructive discharge and forced into retirement because of her age in violation of section 623(f)(2);

WHEREAS Section 145.35 of the Ohio Revised Code provides that a member of the Public Employees Retirement System whose application for disability retirement is approved be placed on disability retirement "as of the first

day of the month immediately following the later of . . . the last day for which compensation is paid . . . or . . . the attainment of eligibility for benefits" as established by relevant medical evidence; and

WHEREAS plaintiff shall receive disability retirement benefits retroactive to the aforementioned date;

IT IS ORDERED that defendant Public Employees Retirement System process plaintiff's application for disability retirement as submitted in June, 1985, and take all other action consistent with this Court's opinion and Sections 145.35 (except for the age limitation), 145.36 and 145.39.

_____

JUDGE, U.S.D.C.